



# Federally Speaking



by Barry J. Lipson

Welcome to the inaugural issue of **Federally Speaking**, brought to you through the cooperation of the Western Pennsylvania Chapter of the Federal Bar Association and the Allegheny County Bar Association. As Third Circuit Vice President of the National Federal Bar Association and active ACBA member, I have been asked to author **Federally Speaking**. From time to time this column may carry the by-line of other FBA West Penn members.

Our purpose in bringing you **Federally Speaking** is to keep you abreast of what is happening on the Federal scene, whether it be a landmark US Supreme Court decision, a new Federal regulation that may impact your practice, or “heads ups” to CLE opportunities that may prove beneficial to your practicing of Federal Law. In this latter regard, we invite all Western Pennsylvania CLE providers who have a program or programs that relate to Federal practice, to advise us as early as possible, so that we can include mention of them in **Federally Speaking**.

**PSST--WE WON'T COMPLY.** According to the Government's Brief, submitted to the **Court of Appeals** in Microsoft, it had been reported that "the most damaging documents ... were written months after that first government [document] request arrived, *months after Microsoft's leaders knew that everything they wrote was likely to wind up in prosecutors' hands.* ... Judge Jackson, who admitted those documents into evidence, likened the phenomenon to the federal prosecution of drug traffickers, who are repeatedly caught as a result of telephone wiretaps ... *'they never figure out that they shouldn't be saying certain things on the phone.'*" US v. Microsoft, US Brief, Nos. 00-5212, 00-5213 (DC Cir, January 2001); Joel Brinkley & Steve Lohr, U.S. v. Microsoft 6 (2000) (emphasis added).

**HELP, I'M A PRISONER IN A CHINESE BAKERY!** The U.S. Court of Appeals for the **Third Circuit** advised: “We emphatically disagree ... that a year and a half of incarceration and forced labor for a fifteen-year old who voiced opposition to the government is not sufficiently severe punishment to qualify as persecution,” in holding that Lin, “who had even quit working in a bakery after a few months because he was afraid he would attract the government's attention, ... has satisfied the standards for both political asylum and withholding of deportation.” The Court, therefore, reversed the **Immigration Judge's** and the **Board of Immigration Appeals'** denial of political asylum under § 208(a) of the Immigration and Nationality Act, [8 U.S.C. § 1158\(a\)](#), and the withholding of deportation under § 243(h) of that Act, [8 U.S.C. § 1253\(h\)](#), and remanded for further proceedings consistent with this opinion. **Li Wu Lin V. Immigration & Naturalization Service**, No. 00-1849, 2001 U.S. App. LEXIS 937 (3<sup>rd</sup> Cir, Jan. 24, 2001).

**FTC-HELP.** The **Federal Trade Commission** has available for those interested in franchising, "A Consumer Guide to Buying a Franchise." It clue's you in on the initial inquiries you need to make before you or your client commit to anything or make any significant expenditures. This consumer guide can be down loaded online at [www.ftc.gov/bcp/online/pubs/invest/buyfran.htm](http://www.ftc.gov/bcp/online/pubs/invest/buyfran.htm) or a hard copy may be obtained by calling 1 877 **FTC-HELP**.

**Holey Cheese.** No surprise, the George W. White House imposed a moratorium on rules issued in the final days of the Clinton administration. What surprised some is that Grade A Swiss cheese is being allowed to have smaller holes, as Clinton had decreed, anyway. **USDA** officials decided the cheese standard was technically a notice and not a new regulation and so allowed its publication in the Federal Register as scheduled. Under the new standard the minimum sized hole is reduced to three-eighths of an inch from eleven-sixteenths to thirteen-sixteenths of an inch in diameter, in order to keep the cheese from getting tangled in high-speed slicing machines. Some will miss the larger holes; others may enjoy the extra cheese per slice (but **not** per pound).

**FCC Content Neutral.** Michael Powell, new **FCC** chairman, believes the **Federal Communications Commission** should "strictly" stay out of determining the content of programming, even if the **FCC**, in certain instances, may have the regulatory authority to do so. He objects to the past practice of "3 of 5 commissioners" making content decisions.

**Stranger Than Fiction.** In the waning days of the Clinton presidency, Paul Prosperi's appellate lawyer, Ted Olson, who argued the case for George W. Bush against Al Gore in the **U.S. Supreme Court** Florida election case, wrote to Bill Clinton on Prosperi's behalf. Prosperi had recently lost his appeal to the **U.S. Supreme Court** on a federal conviction of filing false tax returns with the **IRS** and using false bank records to cover up an \$8 million embezzlement of clients' trust funds. Clinton commuted his sentence. Oh, yes, Clinton and Prosperi were college chums.

### **The FEDERAL CLE Corkboard.**

Tues, March 13, 2001--Mediation in Federal Agencies, Joel Pretz and Kim Bobrowsky,  
FBA LearnAbout™ Monthly Luncheon Series\*\*

Tues, April 3, 2001--Recent National Labor Relations Act Developments, Gerald Kobell,  
ACBA Lunch & Learn Labor Series\*

Tues, April 10, 2001--What's Up with the US Attorney's Office, Leon Rodriguez,  
FBA LearnAbout™ Monthly Luncheon Series\*\*

Thurs, April 19, 2001--Immigration Law and Procedure, Hon. William Strasser,  
FBA Lunch & Afternoon (12-4 PM) Seminar\*\*

Tues, May 8, 2001--Securities Litigation: What You Need to Know, Alan Steinberg,  
FBA LearnAbout™ Monthly Luncheon Series\*\*

\*ACBA-For information and reservations call Dorie Schnippert at 412-402-6610.

\*\*FBA-For information and reservations call Rick Taylor at 412/566-1626.

*Please send Federal CLE information, any comments and suggestions you may have, and/or requests for information on the Federal Bar Association to: Barry J. Lipson, FBA Third Circuit Vice President, at the Law Firm of Weisman Goldman Bowen & Gross, 420 Grant Building, Pittsburgh, Pennsylvania 15219-2266. (412/566-2520; FAX 412/566-1088; E-Mail [blipson@wgbglaw.com](mailto:blipson@wgbglaw.com)).*

Copyright© 2001 by the Federal Bar Association, Western Pennsylvania Chapter.